

## Department of Defense

## § 3601.108

(d) *Withdrawal of notification.* A DoD employee may withdraw written notice under paragraphs (a), (b) or (c) of this section upon deciding that disqualification from participation in the matter is no longer required.

### § 3601.106 Limitation on solicited sales.

A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's noncommercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal building management policies does not constitute solicitation for purposes of this section.

### § 3601.107 Prior approval for outside employment and business activities.

(a) A DoD employee, other than a special Government employee, who is required to file a financial disclosure report (SF 450 or SF 278) shall obtain written approval from the agency designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with paragraph (b) of this section. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation. For purposes of this section, the following definitions apply:

(1) *Business activity.* Any business, contractual or other financial relationship not involving the provision of personal services by the DoD employee. It does not include a routine commercial transaction or the purchase of an asset or interest, such as common stock, that is available to the general public;

(2) *Employment.* Any form of non-Federal employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, em-

ployee, agent, attorney, consultant, contractor, general partner or trustee; and

(3) *Prohibited source.* See 5 CFR 2635.203(d) (modified by the separate DoD component agency designations in § 3601.102 of this part).

(b) The DoD component designated agency ethics official or designee may, by a written notice, exempt categories of business activities or employment from the requirement of paragraph (a) of this section, for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

### § 3601.108 Disclaimer for speeches and writings devoted to agency matters.

A DoD employee who uses or permits the use of his military rank or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 CFR 2635.807(b), shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's agency, as defined in § 3601.102, and the DoD employee has not been authorized by appropriate agency authority to present that material as the agency's position. The disclaimer shall be made as follows:

(a) The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its components.

(b) Where a disclaimer is required for an article, book or other writing, the disclaimer will be printed in a reasonably prominent position in the writing itself.

(c) Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.



## CHAPTER XXVIII—DEPARTMENT OF JUSTICE

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<i>Part</i>		<i>Page</i>
3801	Supplemental standards of ethical conduct for employees of the Department of Justice .....	701



## **PART 3801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF JUSTICE**

Sec.

3801.101 General.

3801.102 Detailed or assigned special agents of certain Departmental components.

3801.103 Designation of separate Departmental components.

3801.104 Purchase or use of certain forfeited and other property.

3801.105 Personal use of Government property.

3801.106 Outside employment.

AUTHORITY: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; E.O. 12988, 61 FR 4739; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.701–2635.705, 2635.803, 2635.807(a)(2)(ii); and DOJ Order 1735.1.

SOURCE: 62 FR 23942, May 2, 1997, unless otherwise noted.

### **§ 3801.101 General.**

In accordance with § 2635.105 of this title, the regulations in this part apply to employees of the Department of Justice and supplement the Standards of Ethical Conduct for Employees of the Executive Branch in part 2635 of this title. In addition to the regulations contained in part 2635 of this title and in this part, employees are subject to the conduct regulations contained in part 735 of this title and 28 CFR part 45.

### **§ 3801.102 Detailed or assigned special agents of certain Departmental components.**

Notwithstanding a detail or assignment to another entity, any special agent of the Federal Bureau of Investigation or Drug Enforcement Administration who is subject to the regulations or standards of ethical conduct of that entity pursuant to § 2635.104 of this title shall also remain subject to the regulations in this part.

### **§ 3801.103 Designation of separate Departmental components.**

(a) Pursuant to § 2635.203(a) of this title, each of the following components is designated as a separate agency for purposes of the regulations contained in subpart B of part 2635 of this title

governing gifts from outside sources, and, accordingly, § 2635.807 of this title governing teaching, speaking, and writing:

Antitrust Division

Bureau of Prisons

(including Federal Prison Industries, Inc.)

Civil Division

Civil Rights Division

Community Relations Service

Criminal Division

Drug Enforcement Administration

Environment and Natural Resources Division

Executive Office for Immigration Review

Executive Office for United States Attorneys

(The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.)

Executive Office for United States Trustees

(The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.)

Federal Bureau of Investigation

Foreign Claims Settlement Commission

Immigration and Naturalization Service

Independent Counsel appointed by the Attorney General

INTERPOL

National Drug Intelligence Center

Justice Management Division

Office of Information and Privacy

Office of Intelligence Policy and Review

Office of Community Oriented Policing Services

Office of Justice Programs

Office of the Pardon Attorney

Office of Policy Development

Offices of the United States Attorney (94)

(Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office.)

Offices of the United States Trustee (21)

(Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.)

Tax Division

United States Marshals Service

United States Parole Commission

(b) Employees serving in positions within the Department but outside of the components designated in paragraph (a) of this section must continue to treat the entire Department of Justice as their employing agency for purposes of the gift rules of subpart B of

#### § 3801.104

part 2635 of this title and the application of the teaching, speaking and writing provisions found in §2635.807 of this title.

#### § 3801.104 Purchase or use of certain forfeited and other property.

(a) In the absence of prior approval by the agency designee, no employee shall purchase, directly or indirectly, from the Department of Justice or its agents property forfeited to the United States and no employee shall use property forfeited to the United States which has been purchased, directly or indirectly, from the Department of Justice or its agents by his spouse or minor child. Approval may be granted only on the basis of a written determination by the agency designee that in the mind of a reasonable person with knowledge of the circumstances, purchase or use by the employee of the asset will not raise a question as to whether the employee has used his official position or nonpublic information to obtain or assist in an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties. A copy of the written determination shall be filed with the Deputy Attorney General.

(b) No employee of the United States Marshals Service, Federal Bureau of Investigation, or Drug Enforcement Administration shall purchase, directly or indirectly, from his component, the General Services Administration, or the agent of either, property formerly used by that component and no such employee shall use property formerly used by his component which has been purchased, directly or indirectly, by his spouse or minor child from his component, the General Services Administration, or to the agent of either.

#### § 3801.105 Personal use of Government property.

Employees are prohibited by part 2635 of this title from using Government property for other than authorized purposes. The Department rule authorizing limited personal use of Department of Justice office and library equipment and facilities by its employees is at 28 CFR 45.4.

#### 5 CFR Ch. XXVIII (1-1-01 Edition)

#### § 3801.106 Outside employment.

(a) *Definition.* For purposes of this section, *outside employment* means any form of employment, business relationship or activity, involving the provision of personal services whether or not for compensation, other than in the discharge of official duties. It includes, but is not limited to, services as a lawyer, officer, director, trustee, employee, agent, consultant, contractor, or general partner. Speaking, writing and serving as a fact witness are excluded from this definition, so long as they are not combined with the provision of other services that do fall within this definition, such as the practice of law. Employees who wish to engage in compensated speaking and writing should review §2635.807 of this title.

(b) *Prohibited outside employment.* (1) No employee may engage in outside employment that involves:

(i) The practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or children;

(ii) Any criminal or habeas corpus matter, be it Federal, State, or local; or

(iii) Litigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker.

(2) Where application of the restrictions of paragraph (b)(1) of this section will cause undue personal or family hardship; unduly prohibit an employee from completing a professional obligation entered into prior to Government service; or unduly restrict the Department from securing necessary and uniquely specialized services, the restrictions may be waived in writing based upon a determination that the activities covered by the waiver are not expected to involve conduct prohibited by statute or Federal regulation. Employees should refer to DOJ Order 1735.1 on obtaining waivers. The Order is available from the agency designee which, for purposes of this rule, shall be the Deputy Designated Agency Ethics Official for the component.

(c) *Prior approval for outside employment.* (1) An employee must obtain

**Department of Justice****§ 3801.106**

written approval before engaging in outside employment, not otherwise prohibited by paragraph (b) of this section that involves:

(i) The practice of law; or  
(ii) A subject matter, policy, or program that is in his component's area of responsibility.

(2) Employees should refer to DOJ Order 1735.1 for procedures on obtaining prior approval. A waiver granted

pursuant to paragraph (b)(2) of this section will be sufficient to satisfy this prior approval requirement.

(3) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct that is prohibited by statute or Federal regulation.

[62 FR 23942, May 2, 1997; 62 FR 31865, June 11, 1997]